

EXHIBIT 6

REDACTED VERSION

OF DOCUMENT

SOUGHT TO BE SEALED

Page 1

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

WAYMO LLC,

Plaintiff,

vs. Case No.

UBER TECHNOLOGIES, INC.; 17-cv-00939-WHA

OTTOMOTTO, LLC; OTTO

TRUCKING LLC,

Defendants.

CONFIDENTIAL

VIDEOTAPED DEPOSITION OF UBER TECHNOLOGIES, INC.

30(b)(6) REPRESENTATIVE - RANDY HAIMOVICI

San Francisco, California

Thursday, December 21, 2017

Volume I

REPORTED BY:

REBECCA L. ROMANO, RPR, CSR No. 12546

JOB NO. 2779670

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1 A. Sure.

10:12:33

2 Q. Starting with the Nick Gicinto, what did
3 you discuss with Nick Gicinto?

4 A. I spoke with Nick Gicinto about the use
5 of nonattributable devices. He would call that
6 misattributable devices.

10:12:42

7 Q. And so when you say "misattributable
8 devices," you use that term interchangeably with
9 "nonattributable devices"?

10 A. I do.

10:13:00

11 Q. Okay. And when you use that term,
12 what -- what is your understanding of what term
13 means?

14 A. Yeah, so those are devices that are used
15 that can't be linked back to Uber. So by way of
16 example of how Nick described it to me, if there's
17 a physical threat to the company, and we want to
18 investigate that physical threat, we want to be
19 able to do that without having that investigation
20 linked back to the company; and probably more --
21 more importantly, the employees doing it, for
22 safety reasons.

10:13:05

10:13:24

23 Q. And what -- what did you and Nick Gicinto
24 discuss specifically about nonattributable devices?

25 A. Pretty much what I just told you. He

10:13:44

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1 gave me an example of how they are used. He
2 described the purpose. And -- and mentioned that
3 based on his knowledge, they were only used by
4 people in the security department.

5 Q. When you say that you discussed with
6 Mr. Gicinto how nonattributable devices are used,
7 what did he say in terms of how they were used?

8 A. In the same way I just described.

9 Q. Okay. Nothing addition- -- nothing
10 beyond what you've already -- 10:14:15

11 A. Not that I recall.

12 Q. Okay. And in terms of discussing the
13 purpose of using nonattributable devices, did he
14 say anything further than what you've already
15 provided? 10:14:23

16 A. Not that I recall. It was just basically
17 what I told you.

18 Q. You said you spoke with Eric Meyhofer?

19 A. I did.

20 Q. What you did and Eric Meyhofer discuss? 10:14:34

21 A. So Eric and I talked about use of
22 nonattributable devices. And he confirmed that
23 they are not used by ATG. As I'm sure you know,
24 he's the head of ATG.

25 We talked about the use of ephemeral 10:14:47

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1 communications, and he confirmed that his use of 10:14:50
2 ephemeral communications were limited to social
3 reasons almost exclusively, but that there are
4 times when he's talking about performance issues
5 for employees, where he's used it, that he's never 10:15:03
6 used ephemeral communications to discuss anything
7 related to this case.

8 That he has an understanding of what and
9 how the attorney-client privilege should be used.

10 And he's adhered to the knowledge he was given and 10:15:18
11 the training he was given.

12 Q. And in your conversations with
13 Mr. Meyhofer, were you talking about his use
14 specifically or ATG more generally?

15 A. His use specifically -- well, when you 10:15:33
16 say "use," just tell me what you mean.

17 Q. So let me -- let me break it down.

18 A. Okay.

19 Q. So for -- for nonattributable devices,
20 you said that Mr. Meyhofer told you that they're 10:15:42
21 not used by anyone in ATG; is that right?

22 A. That's correct.

23 Q. Okay. When you were talking about
24 ephemeral communications, did you discuss with
25 Mr. Meyhofer whether they are used by others in ATG 10:15:50

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1 in addition to him?

10:15:56

2 A. We talked about his use of it. We talked
3 about his knowledge of Levandowski's use of it, his
4 communications with Travis. We did not go over
5 everybody in ATG.

10:16:08

6 Q. Okay. So when you say that Mr. Meyhofer
7 told you that nonattributable devices are not used
8 by anyone in ATG, what -- what time frame does that
9 cover? Is that for all time?

10 A. Yeah. Did not put any limitation on it.

10:16:26

11 No time limitation. They have not been used.

12 Q. And then you said you discussed with him
13 the use of ephemeral communications with
14 Travis Kalanick; is that right?

15 A. Right.

10:16:42

16 Q. And what did he tell you about that?

17 A. That any communications he had with
18 Travis Kalanick, what we are calling ephemeral
19 communications, were purely and 100 percent social.

20 Q. And you said he also told you about
21 ephemeral communications with Anthony Levandowski;
22 is that right?

23 A. He did.

24 Q. What did he tell you about that?

25 A. He said it was mostly social, but there

10:17:03

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1 discussions about the current litigation, or would 10:18:06
2 it also include sort of the underlying facts, for
3 example, discussions about the acquisition of Otto?

4 A. I did not ask him specifically about the 10:18:21
5 acquisition of Otto; but, in general, what he said
6 is, he only used it for social reasons and to talk
7 about employee issues, and for no other reason.

8 I followed up and said, "Did you talk
9 about anything related to this case?" He said, no.

10 And I said, "Have you ever used ephemeral 10:18:37
11 communications to discuss anything about
12 competitors?" And he said, no.

13 Q. You said you also talked to Wendy Ray
14 to --

15 A. I did. 10:18:53

16 Q. -- prepare for your testimony?

17 And Wendy Ray is an attorney at Morrison
18 & Foerster; is that right?

19 A. That is correct.

20 Q. And what did you and Ms. -- and Ms. Ray 10:18:59
21 discuss?

22 A. Yeah, so we talked about privilege review
23 in this case pursuant to the document production.
24 And we talked about the collection of names of --
25 we talked about the -- the -- their efforts to 10:19:17

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1 collect -- identify people at the company that used 10:19:19
2 ephemeral messaging.

3 Q. And what did Ms. Ray tell you about the
4 privilege review in this case?

5 A. That the process was, when documents were 10:19:35
6 collected, they were sent to Morrison & Foerster,
7 and Morrison & Foerster reviewed those documents to
8 determine whether they were privileged or not
9 privileged. And that was Morrison & Foerster's
10 responsibility. 10:19:49

11 Q. And did they review each document, or did
12 they rely on, I guess, computer programs that --
13 that might be able to exclude privilege
14 information?

15 MR. BRILLE: Objection. Form. 10:20:02

16 THE DEPONENT: Okay. I didn't get into
17 the specifics of how they did it.

18 Q. (By Ms. Roberts) Okay.

19 A. I just confirmed the fact that the
20 responsibility of reviewing the document production 10:20:10
21 and making privileged determinations was done by
22 Morrison & Foerster.

23 Q. Okay. But you don't know the actual
24 steps they took to go through that process?

25 A. I don't. 10:20:21

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1 A. You got it.

10:22:53

2 Q. So this is the list that you discussed
3 with Ms. Ray?

4 A. That's correct.

5 Q. Okay. Other than privilege review in
6 this case and the efforts to determine who at Uber
7 uses ephemeral messaging, is there anything else
8 that you discussed with Ms. Ray to prepare for your
9 testimony today?

10:23:04

10 A. Not that I remember.

10:23:15

11 Q. You also identified Sidney Majalya as
12 someone you spoke with?

13 A. I did.

14 Q. What did you and Mr. Majalya discuss?

15 A. I spoke with Sidney about whether, as
16 somebody who works in compliance, it was reported
17 to him that somebody misused the attorney-client
18 privilege.

10:23:24

19 So, in other words, marking a document
20 privileged that shouldn't be; and if that had been
21 reported to him, what he would have done in
22 response.

10:23:38

23 And Sidney said that -- that had not been
24 reported to him. But that if it had been, that he
25 would have taken whatever appropriate, you know,

10:23:51

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1 remediation was necessary, training or -- or 10:23:56
2 otherwise.

3 Q. Is there anything else you discussed with
4 Mr. Majalya?

5 A. Nope. That's what I remember. 10:24:09

6 Q. And so you -- you asked him if he'd ever
7 received any reports of misuse of the
8 attorney-client designation; is that right?

9 A. That's exactly what I asked him.

10 Q. And he said, no, he never received any 10:24:19
11 such reports?

12 A. That is what he said.

13 Q. Okay. Did you discuss Mr. Jacobs's
14 allegations with him?

15 A. I did not. 10:24:26

16 Q. Okay. So because Mr. Jacobs -- I am not
17 sure, have you read Mr. Jacobs' --

18 A. I have.

19 Q. Okay. So Mr. Jacobs says that -- that
20 employees at Uber misused the attorney-client 10:24:37
21 privilege designation.

22 You are aware that he has alleged that?

23 MR. BRILLE: I'm going to object to form
24 and scope. And I will note for the record that
25 based on the topics of -- in the 30(b)(6), that we 10:24:47

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1 Q. You said she's in ER?

10:27:35

2 A. Employee relations.

3 Q. Employee relations?

4 A. Right.

5 Q. Okay. And you could not remember her

10:27:40

6 last name?

7 A. No, I know her last name. I just don't

8 want to --

9 Q. So you can't pronounce her last name?

10 Sorry. Sorry.

10:27:46

11 MR. BRILLE: You need to just slow down

12 for her.

13 THE DEPONENT: She's a friend of mine, so

14 I don't want to mispronounce it. But the

15 discussion with her was, you know, very identical

10:27:55

16 discussion I had with Sidney. And the results were

17 the same.

18 Q. (By Ms. Roberts) So you asked Pam if

19 she'd received any reports of misuse of the

20 attorney-client privilege designation?

10:28:10

21 A. That is correct. In essence.

22 Q. Okay. And did you limit the scope of

23 that to excluding the Jacobs letter?

24 A. Right.

25 Q. Okay. So you specifically limited the

10:28:20

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1 scope when you were talking to her?

10:28:24

2 A. Yes.

3 Q. Okay. And what did she say in response?

4 A. Same thing Sidney said. She's never

5 received any reports like that, that came

10:28:32

6 through -- that she had to investigate. So it

7 wasn't anything that had come to her for her to

8 take action on; but that if it did, she would --

9 you know, she would do the same thing Sidney did.

10 She would take whatever steps are

10:28:51

11 necessary to correct it, provide training, whatever

12 the course may be. And she mentioned that not as a

13 result of investigating that claim, but in her

14 work, if she saw somebody who was stating something

15 that was privileged when it was not, she would

10:29:06

16 correct that person based on the training she has.

17 Q. You said Pam is in employee relations; is

18 that right?

19 A. That's correct.

20 Q. Is she an attorney?

10:29:23

21 A. She is not.

22 Q. Okay. Can you just explain for -- for

23 me -- Mr. Majalya is a compliance attorney; Pam is

24 in employee relations -- sort of what method,

25 reports of misuse of privilege would get escalated

10:29:35

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1 A. We talked about document productions. We 10:30:36
2 talked about privilege review. We talked about
3 document retention.

4 Q. Anything else?

5 A. That's what I remember right now. 10:30:51

6 Q. And who is Mr. Murray?

7 A. He is our global head of ediscovery and
8 information governance.

9 Q. Is he an attorney?

10 A. He is not. 10:31:03

11 Q. But he works internally at Uber on
12 ediscovery issues, is that --

13 A. Ediscovery and information governance.

14 Q. When you say "information governance,"
15 what -- what do you mean by that? 10:31:14

16 A. I mean, the -- that's a broad question,
17 but I'll give you a high-level broad answer.

18 I mean the way the company manages its
19 information, all of it, everything.

20 Q. You -- you said you discussed with 10:31:29
21 Mr. Murray document production?

22 A. I did.

23 Q. Okay. What did you discuss about that?

24 A. We talked about the process for privilege
25 view. And he confirmed that when we're in 10:31:35

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1 litigation, and we have a document production, that 10:31:38
2 the document production is sent to our outside
3 counsel, and that the outside counsel is
4 responsible for conducting a privilege review.

5 Q. You also listed privilege review as 10:31:51
6 something that you discussed with -- with
7 Mr. Murray.

8 Did you discuss anything else beyond what
9 you just said?

10 A. No. 10:31:58

11 Q. Okay. And you said you discussed
12 document retention with Mr. Murray.

13 What did you discuss about that?

14 A. I don't remember all of the conversation,
15 but, in essence, what the document retention is for 10:32:07
16 emails and documents, chat applications, you know,
17 normally when people are on litigation hold, that's
18 the essence -- it was the essence for our
19 conversation.

20 Q. Anything other than document privilege 10:32:27
21 review and document retention discussed with
22 Mr. Murray?

23 A. Not that I remember.

24 Q. You also said you talked to Mia Mazza?

25 A. I did. 10:32:41

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1 Q. -- can you tell me what you did to 10:44:32
2 prepare to testify on that topic?

3 A. Give me one second here.

4 Q. Sure.

5 A. I mean, it would be all the same things 10:44:43
6 I've already identified to you with respect to the
7 use of the attorney-client privilege.

8 I have talked to a lot of the same
9 people, reviewed a lot of the same docs. And then,
10 of course, just based on my own knowledge of 10:44:57
11 company policies and procedures.

12 Q. Going back to the people you spoke with
13 about attorney-client privilege, which included
14 Mr. Majalya and Pam --

15 A. Uh-huh. 10:45:16

16 Q. -- why is it that you asked them about
17 whether they were aware of any reports of misuse of
18 the privilege designation?

19 A. Because they -- they are the two people I
20 know in the company that if there was a report 10:45:26
21 about the misuse of it, they are likely to be the
22 ones that would investigate it.

23 So they are a good resource to know if
24 this is something that is being reported and
25 something that needs investigation. 10:45:37

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1 knowledge of reports of misuse of the
2 attorney-client privilege designation?

3 A. I did not. But, like I said, I think,
4 more than likely, that would go to those two
5 individuals.

10:46:40

6 Q. Mr. Majalya isn't the only compliance
7 attorney in the company; is that correct?

8 A. He's not.

9 Q. Okay. Is there some reason why you
10 thought that it -- only speaking with him and not
11 other compliance attorneys would be sufficient?

10:46:54

12 A. I did. Because he oversees compliance.
13 He's in charge of compliance.

14 Q. Okay.

15 A. And the same applies to Pam. I mean,
16 she's in charge of ER.

10:47:05

17 Q. Gotcha.

18 For Topic 3.3, you said to -- to prepare
19 for it, you -- you talked to the same people and
20 reviewed the same documents; is that correct?

10:47:26

21 A. In essence, yes, related to
22 attorney-client privilege used. And, plus, my own
23 knowledge of what happens at the company with
24 respect to training on attorney-client privilege
25 and policies.

10:47:40

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1 Q. And so, is there anything further that 10:47:49
2 you did to prepare to testify on Topics 2, and 3.3
3 that we haven't discussed already?

4 A. Not that I remember.

5 Q. You mentioned your awareness of the 10:48:02
6 training that's done on attorney-client privilege?

7 A. I did.

8 Q. Okay. Can you tell me what -- what
9 training is done?

10 A. So at a high level, when new employees 10:48:12
11 are hired, they receive training on the
12 attorney-client privilege, and then there's
13 training that happens periodically throughout the
14 year for different groups in the business.

15 Q. Who does the trainings? 10:48:33

16 A. Different people -- mostly, the people I
17 know are all in the legal department. Many of
18 those people are in my department. But different
19 people do it.

20 Q. So let me break it down. 10:48:45

21 You said there's training for new hires?

22 A. Uh-huh. That's correct.

23 Q. Who is responsible for trainings for new
24 hires?

25 A. I -- I don't know specifically who is 10:48:52

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1 responsible for it, but there's -- there is 10:48:54
2 training that goes on. It's not -- it's a video.

3 Q. Okay. And then you said there's periodic
4 training?

5 A. That's correct. 10:49:09

6 Q. Okay. And the periodic training is for
7 various different departments at different times?

8 A. That's right.

9 Q. Okay. And it's put on by somebody in
10 legal at all times? 10:49:20

11 A. Typ- -- typically, a lawyer in legal. I
12 would say almost always a lawyer in legal.

13 Q. And is there a particular group within
14 legal that is responsible for that?

15 A. There's not. Not formally. But a lot of 10:49:34
16 the times, people in my department do it.

17 Q. And when you say your department, you
18 mean litigation?

19 A. I do.

20 Q. Okay. Have you ever done one of these 10:49:44
21 trainings?

22 A. You know, I was scheduled to do one, and
23 then it got canceled. And I'm scheduled to do one
24 either in January or March. But others in my
25 department have. And I participate in the 10:49:53

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1 preparation of the materials for the training.

10:49:57

2 Q. Are there -- is it the same materials
3 that are used for trainings over and over, or do
4 they get changed?

5 A. In essence, they are the same, you know.

10:50:13

6 In essence, they are the same. Sometimes there is
7 tweaks to it for the particular audience that you
8 are talking to. All right?

9 We are talking to nonlawyers, so we've
10 got to try to present it in a way that, you know,
11 will be palatable to them and -- and capture their
12 attention. We want them to pay attention.

10:50:24

13 So nothing really in substance changes as
14 far as, you know, what the goals of the training
15 are. But little tweaks to the presentations are
16 sometimes present.

10:50:37

17 Q. Is there -- are these periodic trainings
18 given on any sort of routine basis?

19 A. I wouldn't call it routine. I would just
20 say as needed.

10:50:59

21 Q. When you say "as needed," how is it
22 determined that it is as needed?

23 A. It could be a variety of different ways.
24 We could be asked. We -- and when I say "we," I
25 mean we in the litigation department or people in

10:51:14

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1 legal. We could be asked. We could make a
2 determination on our own that it should be done.

3 Those are the ways I know of.

4 Q. When the legal department is asked to do
5 one of these periodic trainings about
6 attorney-client privilege, is that because, you
7 know, people need a refresher on how to do it
8 properly?

9 A. I -- I don't recall why people have
10 asked. I just know it's been asked for. I can't
11 tell you what the reasons for it were. You know,
12 the goals remain the same, so it's irrelevant to me
13 whether somebody asks or whether we decide to
14 affirmatively do it. The goal is the same.

15 Q. And when the legal department decides to
16 affirmatively do it, is that because somebody in
17 the legal department has noticed these nonlawyers
18 kind of need more training? They -- they are not
19 doing it right?

20 A. Well, the reason for it is this, right?
21 And it's probably hard to get if you've -- you
22 know, you are a lawyer. You've spent your life at
23 a firm, but just -- just think about dealing with a
24 company of mostly nonlawyers. They don't know
25 anything about litigation. They don't know about

10:51:16

10:51:32

10:51:41

10:51:55

10:52:06

10:52:19

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1 discovery. They don't know probably what the 10:52:23
2 attorney-client privilege means.

3 And we know. We have new people come to 10:52:32
4 the company all the time. And so we will go out
5 there periodically and just make sure we do the
6 training because we want people to understand what
7 the privilege is and make sure they are trained
8 appropriately on it.

9 Q. So there -- you don't recall any of these 10:52:44
10 periodic trainings being because of, like, a
11 particular need to -- or identification of people
12 not using the privilege correctly?

13 A. No, no.

14 Q. All right. Let's talk about ephemeral 10:53:03
15 messaging in a little bit more detail.

16 A. Okay.

17 Q. So we'll -- we'll start with Exhibit 9726 10:53:22
18 that you have.

19 A. Uh-huh.

20 Q. And Tab 1 is the personnel who have used 10:53:22
21 Wickr or similar platform; is that right?

22 A. I'm there. Yup.

23 Q. And you've discussed this with Ms. Ray, 10:53:36
24 correct?

25 A. I did.

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1 A. It would be platforms or chat apps, 10:59:26
2 whatever words you want to use that are considered
3 ephemeral.

4 Q. And when you say "ephemeral," what do you
5 mean by that? 10:59:32

6 A. Well, I mean temporary. So that's all
7 ephemeral means, is that it's retained for a
8 certain period of time. Sort of like Google and
9 off the record. Right? It's temporary.

10 Same with Wickr. It's temporary. 10:59:44

11 Q. Okay. And so HipChat was not?

12 A. HipChat had a retention to it. But I
13 just don't think people typically thought of
14 HipChat as ephemeral, the way they think of
15 Google Hangouts or Wickr.

16 Q. And did you discuss with anybody whether
17 HipChat qualified as being ephemeral or not?

18 A. I did not. It was just based on -- I
19 don't know if I talked to anybody about that
20 specifically. I really don't remember. But 11:00:21
21 just -- I just don't think people consider it to be
22 ephemeral the way they do Google Hangouts with off
23 the record or Wickr.

24 So that's -- that's the most I can tell
25 you. 11:00:33

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1 Q. Did -- did Uber have an account and 11:01:39
2 provide HipChat to -- to users?

3 A. Yes, yes.

4 Q. Okay. For uChat, you said there was a 11:01:51
5 transition to uChat earlier this year; is that
6 correct?

7 A. I did.

8 Q. Okay. And uChat is not listed on Tab 1?

9 A. Same reasons. Same answers.

10 Q. And so we have a clear record, what is -- 11:02:02
11 what is the reason -- your understanding of why
12 uChat wasn't included?

13 A. The same reason, that I don't think the 11:02:16
14 way people think about ephemeral communications
15 they considered uChat to be ephemeral.

16 Q. You've mentioned Google Hangouts,
17 correct?

18 A. I did.

19 Q. Okay. And that does appear on
20 Tab 1 occasionally. 11:02:53

21 What is your understanding of Hangouts?

22 A. That it's a chat application that has off
23 the record and on the record, so it can be
24 ephemeral. And that's the full extent of what I
25 know. 11:03:12

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1 purposes," were there specific business purposes it 11:28:53
2 was --

3 A. I don't know if they were specific, but I
4 know people on the security team used it.

5 Q. Was there any guidance provided to 11:29:02
6 employees about when it was appropriate to use
7 WickrMe for business purposes?

8 A. Well, there was -- there's guidance on
9 when not to use it and -- but it doesn't just apply
10 to WickrMe. It applies to all chat applications. 11:29:16
11 And the guidance was not to use it to discuss
12 topics that are subject to a litigation hold.

13 Q. And that was a guidance for all chat
14 applications --

15 A. Yes. 11:29:31

16 Q. -- is that what you said?
17 And so that, that guidance to not use
18 these chat applications for subjects covered by a
19 litigation hold, that would really only come into
20 play once there was some reason to have a 11:29:49
21 litigation hold --

22 A. That is correct.

23 Q. -- correct?

24 Q. Okay. So, for example, the -- Uber
25 acquired Otto well before this lawsuit was filed. 11:29:59

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1 look at the bottom of Exhibit 9729 --

11:38:55

2 A. Okay.

3 Q. -- the paragraph that says, "Uber Chat

4 Applications are the following" --

5 A. Yes.

11:39:05

6 Q. -- and does that list uChat and

7 Google Hangouts as authorized chat applications?

8 A. Well, it -- it -- it identifies them in

9 there, and then it talks about them on the next

10 page. But, yes.

11:39:18

11 Q. And this paragraph says that, "All other

12 chat applications, including but not limited to

13 Wickr, Telegram, Signal, WeChat, and Snapchat, are

14 not Uber Chat Applications and employees are

15 prohibited from using these for business

11:39:28

16 communications," correct?

17 A. That is correct as of the date this

18 policy went into place in September, true.

19 Q. And prior to this date, employees were

20 not prohibited from using any of -- any of those

11:39:41

21 communications applications listed there?

22 A. Well, except for the fact they were

23 prohibited from using them if they wanted to talk

24 about things that were subject to a litigation

25 hold.

11:39:53

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1 But, again, I don't know.

01:03:03

2 Q. And remind me: Your understanding that
3 the security department is the only department that
4 has used nonattributable devices, what is that
5 based on?

01:03:11

6 A. It's based on my own personal knowledge,
7 my discussion with Nick Gicinto and my discussion
8 with Eric Meyhofer and -- and just my own
9 knowledge.

10 Q. Would the security department track the
11 use of nonattributable devices by other
12 departments?

01:03:24

13 A. No, they would not.

14 Q. Okay.

15 A. I'm not --

01:03:34

16 Q. Sorry.

17 A. That was my fault. You go ahead.

18 Q. That's -- knowing the total use of

19 nonattributable devices within the company is

20 part -- not part of the umbrella of the security
21 department's obligations or duties?

01:03:42

22 A. Well, that's -- that's a strange way to
23 ask the question. So let me answer it this way: I
24 wouldn't think Nick, who provided this information,
25 would be analyzing that for other departments.

01:03:57

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1 department?

01:18:35

2 A. Yes.

3 Q. Do nonlawyers provide trainings or

4 guidance on when other employees should use

5 attorney-client privilege designations?

01:18:46

6 A. Not that aware of, but I didn't want to

7 be 100 percent on that it's only people in the

8 legal department. Because, for example, I

9 explained to you that Pam said that if she saw

10 somebody using the privilege in a way they

01:18:58

11 shouldn't be doing it, she would correct them.

12 Q. And did you investigate whether, for

13 example, department heads give trainings to their

14 employees about the use of the attorney-client

15 privilege?

01:19:09

16 A. I -- I did not.

17 Q. Does Uber instruct its employees to

18 include attorneys in the "to" line of emails so

19 that Uber can argue that the email is privileged?

20 MR. BRILLE: Objection. Form.

01:19:40

21 THE DEPONENT: That would be inconsistent

22 with our training.

23 Q. (By Ms. Roberts) And you are not aware

24 of whether individual employees have done that?

25 A. I am not.

01:19:47

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1 Craig Clark.

01:31:28

2 Q. He's cc'd on the email, correct?

3 A. Right. Yes.

4 Q. And Craig Clark is an attorney?

5 A. He is.

01:31:33

6 Q. And he was an internal Uber attorney,
7 correct?

8 A. Yes.

9 Q. Okay. And is this consistent with --
10 with Uber policy to add an attorney and label
11 everything privileged?

01:31:42

12 MR. BRILLE: Objection. Form.

13 THE DEPONENT: Yeah. So I don't know the
14 context of this document, so you are asking me on
15 the fly. I would say, that's not consistent with
16 our policy; and, again, why we have our outside
17 counsel making the privilege calls, which is also
18 how you -- just like the other documents you have
19 shown me, this is how it got into your hands.

01:31:54

20 Q. (By Ms. Roberts) I'm going to hand you
21 what was previously marked as Exhibit 9022.

01:32:32

22 Let me know when you are ready.

23 Have you seen this document before?

24 A. I have.

25 Q. When did you see this document?

01:33:03

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1 A. You know, I looked at it in preparing for 01:33:04
2 the deposition, but I had seen it before.

3 Q. When did you see it before?

4 A. I don't recall, at some -- some point in
5 the last year. 01:33:10

6 Q. Did you see it before Mr. Jacobs' letter
7 was disclosed in this litigation?

8 A. Yes.

9 Q. Okay. So you saw it outside of the
10 context of what's going on in this case? 01:33:23

11 A. As I said, yes.

12 Q. And if you could take a minute, but
13 I'm -- I'm wondering if this is the same version
14 that you saw.

15 A. Okay. Let me look through and see. 01:33:36

16 I think this is the same version I saw.

17 Q. Do you know if there are more than one
18 version of this presentation?

19 A. I don't think there are. I can't -- I
20 mean, I can't be 100 percent, but I really don't 01:34:13
21 think there are. There is -- sorry.

22 Q. I will represent to you that in
23 Mr. Jacobs' letter, he says that the presentation
24 that he saw Mr. Clark give didn't have any Uber
25 branding on it.

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1 Whereas, the first page of this exhibit 01:34:28
2 does have Uber. So that's why I was asking if you
3 were aware of other versions.

4 A. Yeah. I -- you know, again, I wasn't 01:34:40
5 responsible for the Jacobs investigation. But I --
6 I -- you know, I just think he's wrong about that.

7 Q. In what context did you see this
8 presentation prior to today?

9 A. It was in discussing with others in the
10 department, giving training on the use of the 01:35:01
11 attorney-client privilege. This was sent to me in
12 the context of that. I think Craig forwarded it to
13 Angela, and Angela sent it to me.

14 Q. And what was discussed about training in
15 the context of this presentation? 01:35:15

16 MR. BRILLE: I'm going to object to the
17 extent you are asking him to disclose privileged
18 communications, but...

19 THE DEPONENT: Okay. I'm not going to
20 disclose privileged communications -- 01:35:24

21 MR. BRILLE: Yeah.

22 THE DEPONENT: -- but just to make it
23 easier, we discussed training.

24 Q. (By Ms. Roberts) Was this presentation
25 used in more than one training? 01:35:31

1 [REDACTED]

01:56:51

2 MR. BRILLE: Same objection.

3 THE DEPONENT: Yes. We were -- we were

4 working on a project that people commonly referred

5 to as [REDACTED]. It

01:57:03

6 would take me a long time to explain it.

7 Do you have a specific question related

8 to it?

9 Q. (By Ms. Roberts) Well, so when I asked

10 you what [REDACTED] was sort of a few minutes ago --

01:57:15

11 A. Yeah.

12 Q. -- and you said it's [REDACTED]

[REDACTED] --

14 A. Yes.

15 Q. -- I want to talk specifically about the

01:57:24

16 [REDACTED]

[REDACTED]

18 A. Okay.

19 Q. Can you describe for me what that project

20 was?

01:57:35

21 A. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

01:57:54

1

4 Q. And has that [REDACTED] been
5 implemented?

01:58:16

6 A. No.

7 Q. Was it tested?

8 A. It -- what do you mean by tested?

9 Q. Well, let's take a step back.

10 When you say the project involved

01:58:26

11

14 A. I did say that.

15 Q. Okay. So what -- [REDACTED]

18 MR. BRILLE: Objection. Form. Scope.

19 THE DEPONENT: [REDACTED]

01:59:24

1 A. All right. Andrea, I'm going to help you 02:00:24
2 out here.

3 MR. BRILLE: Same objections.

4 THE DEPONENT:

1 [REDACTED] [REDACTED]

3 Q. (By Ms. Roberts) [REDACTED] [REDACTED]

5 MR. BRILLE: Yeah, I'm going to -- I'm 02:01:27
6 just going to caution you to not disclose any
7 privileged information. I don't know if you
8 consider it privileged. I'm just going to caution
9 you.

10 THE DEPONENT: I don't consider this 02:01:35
11 privileged.

12 MR. BRILLE: Okay.

13 THE DEPONENT: [REDACTED]
[REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED]

20 Q. (By Ms. Roberts) [REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED]

02:02:05

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1 Q. I got it right?

02:02:06

2 A. That's correct. You got it right. Good
3 work.

4 Q. Thank you.

5 Were any law firms involved in the
6 analysis about whether to implement this [REDACTED]
[REDACTED]?

02:02:15

8 A. Right. So you have read the documents.

9 [REDACTED]

[REDACTED]

02:02:30

11 Q. And when did Uber start considering
12 the -- what we are calling the [REDACTED]?

13 A. You know, that's before my time. But my
14 best estimation would be in the summer/fall
15 of 2016, but prior to my arrival at Uber.

02:02:55

16 Q. And I know you said this at the
17 beginning, but you started in late 2016?

18 A. Yeah, November 7th of 2016.

19 Q. Okay. Then you said [REDACTED]

22 Were there law firms that were not
23 authorized that provided the advice?

24 A. Any other law firm was not authorized.

25 Q. [REDACTED] 02:03:25

1

[REDACTED]

24 A. Yes.

25 Q. Okay. What's -- what's his background?

02:04:21

1

02:05:28

1

[REDACTED]

23 Q. I see. Okay. Thanks.

24 Do you know why Uber was [REDACTED]

[REDACTED]

02:06:52

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1 MR. BRILLE: Objection. Form. Scope. 02:06:54

2 THE DEONENT: [REDACTED]

02:08:03

1 [REDACTED]

02:08:07

2 MR. BRILLE: Objection. Form. Scope.

3 THE DEPONENT: Quite the opposite.

4 Q. (By Ms. Roberts) Okay.

5 A. [REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

9 Q. Okay.

10 [REDACTED] [REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

02:08:57

1

3

MR. BRILLE: Objection. Form. Scope.

4

THE DEPONENT: We had ideas about it, but

5 no final decision had been made. 02:09:11

6

Q. (By Ms. Roberts) [REDACTED]

23 MR. BRILLE: Objection. Form. Scope.

24

02:10:09

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1 A. Right. 02:31:38

2 Q. -- dated November 16th, 2016?

3 A. Right.

4 Q. Do you see at the -- the first line there
5 says, "A number of ATG users recently lost email 02:31:42
6 older than 180 days. A restore is in progress"?

7 A. I see that.

8 Q. Okay. Do you have any information about
9 that?

10 A. I don't. 02:31:51

11 MS. ROBERTS: Why don't we take a break.
12 I'm close to done. I just need to organize my
13 notes here.

14 THE VIDEOGRAPHER: We are off the record
15 at 2:32 p.m. 02:32:16

16 (Recess taken.)

17 THE VIDEOGRAPHER: We are back on the
18 record at 2:39 p.m.

19 Q. (By Ms. Roberts) Going back to beginning
20 of the day when we talked about your discussions 02:39:39
21 with Mr. Meyhofer to prepare for your testimony --

22 A. Sure.

23 Q. -- you said you talked to him about
24 nonattributable devices and ephemeral
25 communications. 02:39:49

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1 Did you discuss with him the use of 02:39:49
2 attorney-client privilege designations by ATG
3 members?

4 A. I mean, yes, we talked about how the 02:40:05
5 attorney-client privilege should be used, and he
6 told me what his thoughts were on that.

7 Q. Okay. And can you --

8 A. And -- and we also talked about -- your 02:40:21
9 sort of sparking a memory here. I think we also
10 did talk about the use of attorney-client privilege
11 as it related to the Waymo case.

12 And I'm trying to remember. Yeah, we did
13 talk about the attorney-client privilege and how --
14 how it should be used.

15 Q. And what did Mr. Meyhofer tell you? 02:40:43

16 A. He relayed to me that it was important to
17 use it only when appropriate, only when seeking
18 legal advice from a lawyer.

19 Q. And did you ask him about his personal
20 use of the attorney-client privilege designation or 02:40:58
21 the use within the group?

22 A. The discussion was more his
23 understanding, and as the leader of ATG, his
24 expectations of the people that report to him,
25 which is everybody in ATG. That should be used 02:41:11

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1 only when appropriate.

02:41:14

2 Q. Did you ask him about any training that's
3 been provided to the ATG group about
4 attorney-client privilege designations?

5 A. I didn't because I don't -- I don't know 02:41:23
6 that he would know about that. I did not.

7 Q. If we go back to Topic 2 -- and I don't
8 know if you want to get it in front of you or
9 not --

10 A. Right.

02:41:42

11 Q. -- but it asks about defendants' use
12 of -- use of methods or strategies to conceal facts
13 from discovery by external parties and litigation
14 or government investigations.

15 And then it lists, including improper 02:41:50
16 attorney-client and other privileged designations,
17 ephemeral or encrypted communications,
18 nonattributable devices or anonymous servers.

19 In preparing for your testimony today,
20 did you ask anybody about other methods or 02:42:07
21 strategies to conceal facts from discovery by
22 external parties?

23 A. I focused on the ones you identified.

24 Q. So in your discussions with Mr. Meyhofer,
25 you didn't ask him whether there are other methods 02:42:22

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1 or strategies that the ATG group uses to conceal 02:42:25
2 facts from discovery by external parties?

3 A. I didn't feel the need to ask him because 02:42:36
4 it was clear in my discussion with him that any
5 attempt to conceal information from discovery in
6 litigation was unacceptable.

7 Q. Who said that, you or him?

8 A. That's my summary of our discussion. I 02:42:50
9 didn't feel the need to ask him, was there anything
10 else other than the three things identified in your
11 notice. Because in whatever words he used, he made
12 it clear to me that doing so would be unacceptable.

13 Q. So he told --

14 A. Regardless of methodology.

15 Q. And when you spoke with Mr. Gicinto, did 02:43:00
16 you ask him about the use of methods or strategies
17 to conceal facts from discovery other than those
18 specifically outlined in the topic?

19 A. Not in way you are phrasing it, no. I 02:43:15
20 don't recall that coming up.

21 Q. I'm sorry, I don't understand what you're
22 saying, not in -- not in the way you're phrasing
23 it.

24 A. I didn't discuss that topic with him the 02:43:23
25 way you phrased it in your question.

1 I, Rebecca L. Romano, a Certified Shorthand
2 Reporter of the State of California, do hereby
3 certify:

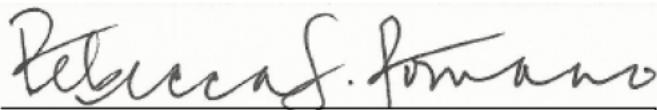
4 That the foregoing proceedings were taken
5 before me at the time and place herein set forth;
6 that any witnesses in the foregoing proceedings,
7 prior to testifying, were administered an oath;
8 that a record of the proceedings was made by me
9 using machine shorthand which was thereafter
10 transcribed under my direction; that the foregoing
11 transcript is true record of the testimony given.

12 Further, that if the foregoing pertains to the
13 original transcript of a deposition in a Federal
14 Case, before completion of the proceedings, review
15 of the transcript [] was [X] was not requested.

16 I further certify I am neither financially
17 interested in the action nor a relative or employee
18 of any attorney or any party to this action.

19 IN WITNESS WHEREOF, I have this date
20 subscribed my name.

21 Dated: December 22, 2017

22
23 
24

25 Rebecca L. Romano, RPR,
CSR. No 12546